

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**FRIDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE**

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO.12831 of 2005

Between :

- 1) Smt.Yogetha Gupta, W/o.Sri Deepak Kuamar,
H.No.22-6-1068, Kalikaman, Hyderabad-2.
- 2) Smt.Hema Gupta, W/o.Sri Pradeep Kumar,
H.No.22-6-1068, Kalikaman, Hyderabad-2.
- 3) Smt.Laxmi Agarwal, W/o.Sri Sandeep Kumar,
H.No.22-6-1068, Kalikaman, Hyderabad-2.
- 4) Smt.Shikha, W/o.Sri Jaideep Kumar,
H.No.22-6-1068, Kalikaman, Hyderabad-2.

..... PETITIONERS

A N D

- 1) The Assistant City Planner, Municipal Corporation of Hyd, Circle
No.5, Khairtabad, Hyderabad.

2) Municipal Corporation of Hyderabad, Rep by its Commissioner, BRK

Bhavan, Tank Bund, Hyd.

3) The MRO Concerned and Joint Collector, Hyderabad district,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, direction or orders, more particularly in the nature of writ of mandamus and direct the respondents to consider the application dt.06-06-2005 of the petitioner for permission for construction on the premises bearing No. 8-2-293/82/L/276-A at MLA Colony, Banjara Hills, Hyderabad without insisting for production of no objection certificate from the MRO concerned and Joint Collector, Hyderabad district and consequently set aside the proceedings No.1652/ACP/C5/MCH/2005 dt.09-06-2005, issued by the 1st respondent as the same as is arbitrary, illegal, and contrary to the provisions of Hyderabad Municipal Corporation Act and pass such other order or orders.

Counsel for the Petitioners: MR.A.NARASIMHA RAO

Counsel for the Respondents: SMT.G.JYOTHI KIRAN

The Court made the following : (order follows 3rd page)

ORDER

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The case of the petitioners is that they are the absolute owners of the house bearing No.8-2-293/82/L/276-A constructed on part of Plot No.44/A, situate at M.L.A. Colony, Banjara hills, Hyderabad in an extent of 330 sq.yards with built-up area of 200 sq.feet having purchased the same under registered sale deed from Smt.Padma Navitha Rao, wife of Sri Padma Krishna Rao on 05-8-2004. The petitioners submit that Smt.Padmanavitha Rao has purchased the aforesaid property from her vendor,

Smt. Virapaneni Srilakshmi, wife of Dr.V.Ranga Rao. The Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, through Proceedings dated 25-5-1994 granted permission under section 26 of the Urban Land Ceiling Act stating that the authority does not want to exercise the first option and they have issued no objection for sale in favour of vendor of the petitioners. The petitioners having purchased the same from the vendor have been in continuous and peaceful possession of the aforesaid property. The petitioners submit that the Municipal Corporation of Hyderabad assessed property tax of the above property. Petitioners have also been given connection by the Central Power Distribution Company Limited (CPDCL) and the Service number assigned is A9-016579. The petitioners thus filed receipt of property tax paid by them and copy of electricity bills.

While things stood thus, the learned counsel for the petitioners seek to contend that the petitioners have submitted an application for permission to construct a building on the above mentioned property to the first respondent-Assistant City Planner, Circle No.5, Municipal Corporation of Hyderabad. The first respondent-Assistant City Planner refused to take the application submitted by the petitioners and the petitioners have sent the applications by way of Courier service along with a covering letter, requesting the first respondent to intimate the building fee required to be paid. The petitioners have resorted to this step, since the first respondent was refusing the application. The petitioners also submitted their sale deed and the link documents along with the proceedings issued by the Special Officer, Competent Authority, Urban Land Ceilings, evidencing their ownership and possession. While rejecting their application, the first respondent issued

proceedings No.1652/ACP/C5/MCH/2005 dated 09-6-2005 and returned the plan unapproved on the ground that they have not remitted building permit fee and the petitioners have not submitted 'no objection certificate' from the Mandal Revenue Officer and Joint Collector, Hyderabad district and also the plan submitted is not in accordance with GO.Ms.No.423, M.A. dated 31-7-1998.

Now the learned counsel appearing for the petitioners submit that in so far as objections regarding building permit fee and G.O.Ms.No.423 MA are concerned, the petitioners are ready to comply the same. The petitioners submit that the building permit fee can be paid by the applicant only after the ascertainment of the same by the first respondent and thereafter a challan is given by the respondent. The other objection is that the petitioners have not submitted 'no objection certificate' from the concerned Mandal Revenue Officer and Joint Collector, Hyderabad. The respondents cannot insist for the production of 'no objection certificate' either from the Mandal Revenue Officer concerned or the Joint Collector of Hyderabad district.

The learned counsel appearing for the petitioners placed reliance on the judgment of this court in **DISTRICT COLLECTOR V/s. N.KRISHNA MOHAN**. In the said judgment, the Division Bench of this court categorically held that obtaining of no objection certificate from the Collector arises only when any law pre-supposes. Mere circular or an executive order informing the petitioners to obtain 'no objection certificate' along with the application filed seeking sanction of permission to construct a building is not at all warranted. He further relied on another judgment of this court in **HYDERABAD POTTERIES PRIVATE LIMITED V/s. DISTRICT COLLECTOR, HYDERABAD**. In Hyderabad Potteries case, this court categorically

held that application for grant of permission to construct a building is conferred upon the Commissioner of Municipal Corporation to consider the same by taking into consideration the documents filed by the applicant along with the application, including the permission already granted by the Corporation to the applicant earlier. The Commissioner shall not reject the application of the petitioner solely on the basis of an objection purported to have been raised by the Joint Collector. The objections, if any raised, will also be taken into consideration with the relevant material on record. The Commissioner shall not reject the application of the petitioner for grant of permission solely on the basis of entries said to have been made in TSLR or not accompanied by any 'no objection certificate' from the revenue officials. The said view is also considered by the Division Bench in WA.No.1096 of 2001 dated 24-12-2001.

While relying the above judgments of this Court, findings and other grounds the petitioners filed this writ petition to direct the respondents to consider their application dated 06-06-2005 seeking permission to construct building on the premises bearing No. 8-2-293/82/L/276-A at MLA Colony, Banjara Hills, Hyderabad without insisting for production of no objection certificate from the MRO concerned and Joint Collector, Hyderabad district and consequently set aside the proceedings No.1652/ACP/C5/MCH/2005 dt.09-06-2005, issued by the 1st respondent as the same as is arbitrary, illegal, and contrary to the provisions of Hyderabad Municipal Corporation Act.

On the other hand, the learned standing counsel for the respondents 1 and 2 seek to contend that in pursuance of the building application dated 06-6-2005

submitted by the petitioners through courier service seeking grant of permission to construct the building i.e., ground plus two upper floors and after examining their application the first respondent issued letter no.1652/ACP/C5/MCH/2005, dated 09-6-2005, informing the petitioners that their proposals submitted for construction of ground plus two upper floors at the premises bearing No. 8-2-293/82/L/276-A at MLA Colony, Banjara Hills, Hyderabad, examined with reference to G.O.Ms.No.423, M.A., dated 31-7-1998 and found three defects; namely, building application has to be filed as required under section 428 and 433 of Hyderabad Municipal Corporation Act 1955 duly remitting requisite building permit fees in M.C.H. Treasury. But sent the building plans through courier enclosing certain documents; no objection certificate was not submitted from the Mandal Revenue Officer and Joint Collector, Hyderabad district; and the proposed five kitchens in ground plus two upper floors building are not tallying with the G.O.Ms.No.423, MA, dated 31-7-1998. With the above objections, the first respondent rejected and returned the plans unapproved and further directed the petitioners not to proceed with any type of construction activities until specific permission is obtained from the office of the first respondent.

The learned standing counsel for the Municipal Corporation emphasized with regard to 4.2 (v) of the Municipal Corporation Building Bye-Laws 1981.

4.2(v) Ownership title: Every application for building permit shall be accompanied by the following as proof of ownership;

(a) attested copy of the original sale/lease deed; and

*(b) attested copy of Revenue Survey Sheet/Municipal Survey Sheet
with mutation record number; or*

(c) affidavit or other documents acceptable to the Commissioner,

MCH.

Heard the learned counsel appearing for the petitioners as well as the learned standing counsel for the respondents 1 and 2 and after going through the judgments relied by the learned counsel appearing for the petitioners, the dicta laid down in the aforesaid judgment rendered by the Division Bench of this court supra-1 is not in accordance with the facts of this case, in-as-much-as the aforesaid judgment was rendered on the point of disputed title to the property and the act of the District Collector therein in refusing to issue no objection certificate to the petitioners was held arbitrary and illegal but that contingency does not arise in this case because all the facts in that case are not similar in the context of the present case on hand. In the present case on hand, the petitioners have purchased the aforesaid property under registered sale deed from Smt.Padma Navitha Rao, wife of Sri Padma Krishna Rao on 05-8-2004. Prior to the petitioners, Smt.Padmanavitha Rao has purchased the aforesaid property from her vendor, Smt. Virapaneni Srilakshmi, wife of Dr.V.Ranga Rao. The Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, through Proceedings dated 25-5-1994 granted permission under section 26 of the Urban Land Ceiling Act stating that the authority does not want to exercise the first option and they have issued no objection for sale in favour of vendor of the petitioners.

Now let us examine the relevant Municipal Corporation Building Bye-laws 1981 (for short 'the bye-laws').

4.2 Application for Building Permit: The following shall accompany the application for building permit in the case of permission for erection, re-erection or making material alteration:

i. Key plan : A key plan drawn to a scale of not less than 1:10,000 shall be submitted along with the application for a building permit, showing the boundary locations of the site with respect to neighbourhood landmarks.

ii. Site-Plan: Plan sent with an application shall be drawn to a scale of not less than 1:500 for areas upto 1 Ha and not less than 1:100 for areas more than 1 Ha and shall show:

- a. *the boundary of the site of any contiguous land belonging to the owner thereof;*
- b. *the position of site in relation to neighbouring street;*
- c. *the name of the street in which the building is proposed to be situated, if any;*
- d. *all existing building standing on, over or under the site;*
- e. *the position of the building or of all other buildings (if any) which the applicant intends to erect upon his contiguous land referred to in (a) in relation to;*

i) the boundaries of the site and in case where the site has been partitioned the boundaries of the portion owned by the applicant and also, of the portion owned by others;

ii) all adjacent streets, buildings (with number of storeys and premises within a distance of 15 m of the site of the contiguous land (if any) referred to in (a); and

iii) position of any public or private water supply with which water is intended to be withdrawn.

f. *the means of access from the street to the building and*

to all other buildings, which the owner intends to erect upon his contiguous land referred to in (a);

g. *space to be left in land around the building to secure a free circulation of air, admission of light and access for scavenging purposes and detailed projection (if any) on to the open spaces;*

h. *the width of the street (if any) in front and of any street (if any) at the side or rear of the proposed building;*

i. *the direction of North Point relative to plan of the building;*

j. *any existing physical features, such as wells, drains trees etc;*

k. *aerial, electric lines; and sewerage and drainage line upto discharge point and water supply lines;*

l. *aerial electric supply line, water supply and drainage line; and*

(m) such other particulars as may be prescribed by the Authority;

iii. **Building Plan: The plan of the buildings and elevations and sections accompanying the application shall be drawn to a scale not less than 1:100. The plan:**

a. *include the floor plans of all floors together with the*

covered areas clearly indicating the size and spacing of all framing members and sizes of rooms and the position of staircases, remarks and lift wells shall include tabular-statement showing plinth area and details of covered area including the compound wall, gate, cantilevered porch and portico, slide swing uncovered staircase, chajjas on all floors;

- b. *show the use of occupancy of all parts of the building;*
- c. *show exact location of essential services, for example WC sinker bath and the like including the water supply and drainage line;*
- d. *include sectional drawings showing clearly the size of footings thickness of basement wall, wall constructions size and spacing of framing members floor slab and roof slabs with their materials and size locations of doors, windows and other openings. The section shall indicate the heights of building and rooms and also the heights of the parapets; and the drainage and of slope, of the roof. At least 1 section should be taken through the staircase;*
- e. *show all street elevations;*
- f. *give dimensions of the permissible projected portions with open spaces;*
- g. *include terrace plan indicating the drainage and the slope of the roof; and*
- h. *give indications of the North Point relative to the plan and scale used.*

Considering the above facts and circumstances of the case and in-as-much-as taking into consideration the aforesaid relevant Municipal Corporation Building Bye-Laws 1981, which do not contemplate no objection certificate either from the concerned Mandal Revenue Officer or Joint Collector. In view of the above circumstances, the action of the first respondent in issuing letter no.1652/ACP/C5/MCH/2005, dated 09-6-2005 directing the petitioners to submit '*no objection certificate*' either from the concerned Mandal Revenue Officer or Joint Collector is liable to be set aside and accordingly it is set aside. Keeping in view of the above finding, I deem it appropriate to direct the respondents 1 and 2 to consider the application of the petitioners afresh in consonance with the relevant Municipal Corporation Building Bye-laws 1981 within four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of at the admission stage. No costs.

JUNE 17th, 2005. -----

I S L. **ELIPE DHARMA RAO, J.**

To

1) The Assistant City Planner, Municipal Corporation of Hyderabad,
Circle No.5, Khairtabad, Hyderabad.

2) The Commissioner, Municipal Corporation of Hyderabad, BRK
Bhavan, Tank Bund, Hyderabad.

3) The District Collector, Hyderabad district, Hyderabad.

4) The Mandal Revenue Officer, Hyderabad Mandal, Hyderabad district.

5) 2 CD copies.

6) One CC to Smt.G.Jyoti Kiran, Standing Counsel for Municipal Corporation, Hyderabad, High Court Buildings, High Court of AP Hyderabad.

7) 1 CC to MR.A.NARASIMHA RAO (27), Advocate for the Petitioners, Bar Association, High Court Buildings, Hyderabad.